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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,666	09/26/2003	John D. Dyson	1092-CIP-02	9793

35811 7590 10/21/2004

IP DEPARTMENT OF PIPER RUDNICK LLP
ONE LIBERTY PLACE, SUITE 4900
1650 MARKET ST
PHILADELPHIA, PA 19103

EXAMINER

PHAM, MINH CHAU THI

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/672,666		DYSON ET AL.	
	Examiner		Art Unit	
	Minh-Chau T. Pham		1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 7-13 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Black et al (5,078,873) or Bendel (3,984,326).

Black et al disclose an automatic backwash filter comprising at least one influent port for introducing a fluid to the filter, a plurality of partitions (117) forming a plurality of compartments for holding a filtering media (111) for filtering fluid, at least one porous plate (105) for supporting a plurality of partitions (117) wherein each of the partitions is mounted atop a continuous portion of the porous plate. Black et al further disclose the filter media (111) comprising one or more selected from the group consisting of sand, anthracite coal or activated carbon and the porous plate consisting of plastics or

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ceramics (col. 4, lines 6-9). Black et al also disclose a method for preparing an automatic backwash filtering system comprising the steps of arranging a plurality of partitions (117) to form a plurality of compartments for holding a filtering media (111) for filtering a fluid and securing a plurality of partitions (117) to a continuous porous plate (105) so that each of the partitions is mounted atop a continuous portion of the porous plate to prevent filtering media from passing therethrough. Bendel discloses an automatic backwash filter comprising at least one influent port for introducing a fluid to the filter, a plurality of partitions (14) forming a plurality of compartments (2, 3 and 4) for holding a filtering media (7) for filtering fluid, at least one porous plate (5) for supporting a plurality of partitions (14) wherein each of the partitions is mounted atop a continuous portion of the porous plate. Black et al also disclose a method for preparing an automatic backwash filtering system comprising the steps of arranging a plurality of partitions (14) to form a plurality of compartments for holding a filtering media (7) for filtering a fluid and securing a plurality of partitions (14) to a continuous porous plate (5). Either Black et al or Bendel discloses a method for preparing a low profile underdrain comprising the steps of arranging a plurality of partitions to form a plurality of compartments for holding a filtering media for filtering a fluid, and securing a plurality of partitions atop at least one porous plate to prevent the filtering media from passing therethrough. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a continuous porous plate that supports a plurality of partitions so that each of the partitions is mounted atop a continuous portion of the porous plate to prevent filtering media from passing therethrough.

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Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Black et al (5,078,873) or Bendel (3,984,326), as applied supra, in view of Savage (6,261,453 B1; 26, 27 a-b & 30 in Fig. 4; 24 in Fig. 6; col. 4, line 22 through col. 6, line 14; col. 6, lines 38-55 and line 61 through col. 7, line 2).

As to the numerical requirements, i.e., "four feet by eight feet" and "eight inches in width" of claim 5, "four feet by eight feet" and "twelve inches in width" of claims 6, the specification contains no disclosure of either the critical nature of these requirements or any unexpected results arising therefrom, and as such these requirements would be arbitrary and therefore obvious. Applicants must show that these requirements are critical. In re Woodruff, 16 USPQ 2d 1934. Savage does disclose that "the length and width of the porous plate may vary according to the size of the underdrain blocks or bottom of filter box" (see col. 5, lines 12-14).

Claims 4 and 14 call for the porous plates are bound together by a lap joint. Savage discloses the porous plates (20) are bound together by a lap joint (24) (see 20 & 24 in Fig. 6, col. 6, lines 1-4). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide mounting bolts as taught by Savage in the automatic backwash filter of either Black et al or Bendel in order to provide a retaining means for securely mounting a plurality of partitions to the porous plate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh-Chau T. Pham whose telephone number is (571)

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272-1163. The examiner can normally be reached on Mon/Tues/Thur/Fri 7:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Minh-Chau Pham
Patent Examiner
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October 19, 2004